

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

REBEL HAYS,

Plaintiff,

CASE NO. 1:15-CV-681

v.

HON. ROBERT J. JONKER

TRANSWORLD SYSTEMS INC., et al.,

Defendants.

/

ORDER ADOPTING REPORT AND RECOMMENDATION

This case involves claims under the Fair Debt Collection Practices Act (“FDCPA”). Plaintiff, acting pro se, timely served the complaint on individual and law firm defendants, but served Defendant Transworld 14 days outside the 120 day window. Based on this delay, Defendant Transworld filed a motion to dismiss (ECF No. 14). In his Report and Recommendation, the Magistrate Judge found good cause for Plaintiff’s delay and recommended denying Defendant’s motion. (ECF No. 19). Defendant responded, which the Court takes as an objection, and stated that the Plaintiff’s settlement with other defendants should be grounds for dismissal. (ECF No. 24). For the following reasons, the Court overrules the objection and approves and adopts the Report and Recommendation.

Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT,

MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997).

Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b)(3); *see also* 28 U.S.C. § 636(b)(1)(C).

Defendant's objection to the Report and Recommendation was not proper because it attempted to raise new grounds for dismissal instead of addressing the findings in the Report. *See Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505, 508-09 (6th Cir. 1991) (holding that an objection to a magistrate's report must specify the issues of contention in the report). The motion to dismiss and the Report addressed the timeliness of service on Defendant. (ECF No. 14, PageID.55; ECF No. 19, PageID.71). Defendant's argument that Plaintiff has foreclosed viable claims by settling with other defendants may or may not have merit; it is not to be decided by this Court based on a one-sided assertion by Defendant styled as an objection to a Report.

IT IS THEREFORE ORDERED THAT:

- Defendant Transworld's objection (ECF No. 24) is OVERRULED.
- The Report and Recommendation of the Magistrate Judge (ECF No. 19) is APPROVED and ADOPTED as the opinion of this Court.
- Defendant Transworld's motion to dismiss (ECF No. 14) is DENIED.
- Defendant Transworld's proposed order (ECF No. 15) is DISMISSED.

IT IS SO ORDERED.

/s/Robert J. Jonker

Robert J. Jonker
Chief United States District Judge

Dated: August 2, 2016